(1)

Supreme Court, U.S
FILED

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No. ——— OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1999

CHARLES M. WIESNER,

Petitioner,

vs.

WILLKIE FARR & GALLAGHER, STEPHEN W. GREINER, LOUIS A. CRACO, JACK ALTBUSH, KENNETH J. BIALKIN, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, DET. THOMAS JACKSON AND ROBERT M. MORGENTHAU,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

PETITION FOR A WRIT OF CERTIORARI

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43pp

QUESTIONS PRESENTED

1. Whether a court may try disputed factual issues on motion for summary judgment and enter a perpetual injunction without trial.

2. Whether permanent and perpetual injunctions not complying with Federal Rule of Civil Procedure 65(d) are valid.

3. Whether 28 U.S.C. Section 1291 give courts of appeals jurisdiction to enter orders of injunctions without final decisions of the district court.

4. Whether one is bound by an order of a court that lacked subject matter jurisdiction.

5. Whether one is bound by an order in personam in a litigation in which he is not designated as a party and to which he has not been made a party by service of process.

6. Whether the burden falls on the party asserting res judicata/preclusion to establish those facts which are necessary for res judicata/preclusion.

7. Whether a court may bar collateral attack against orders void for want of subject matter jurisdiction.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the D.C. Circuit is, upon information and belief, not published (App.A). The summary judgment of the District Court is, upon information and belief, not published (App. B). the judgment of the district court (App. C).

STATEMENT OF JURISDICTION

The summary affirmance Order of the United States Court of Appeals dated and filed August 4, 1999. The Court of Appeals denied a timely petition for rehearing en banc on September 22, 1999. (App. H). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment, Fifth Amendment, Sixth Amendment Seventh Amendment and Fourteenth Amendment of the United States Constitution.

Federal Rule of Civil Procedure 38(a) provides:

> The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

28 U.S.C. §1291 provides:

> The courts of appeals...shall have jurisdiction of appeals from all final decisions of the district courts of the United States,...

Restatement of Judgments §6 provides:

> The lack of any essential element of jurisdiction (power or notice) will render the judgment unenforceable.

Federal Rule of Civil Procedure 65(d) provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts to be restrained;...

Federal Rule of Civil Procedure 12(b)(6) provides:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56,...

STATEMENT OF THE CASE

A fundamental question in this case is whether a litigant has a right to bring a civil rights action complaining of permanent injunctions entered against him by a court that lacked subject matter jurisdiction which are used by adversaries to bar him access to federal courts. Secondly, whether such action is subject to summary dismissal with prejudice because it is "vexatious litigation". Thirdly,

whether such litigant may, as a matter of law, be ordered to pay expenses, costs, attorneys fees, sanctions and be barred to bring future suits by a court that tried all aforesaid disputed factual issues on motion for summary judgment.

This is a civil rights case arising under the Fourth, Fifth, Sixth and Fourteenth Amendment of the Constitution and out of 28 U.S.C. §1291. Three of the principal causes of action regard three 1983 and 1992 permanent injunctions against Charles Wiesner ("petitioner") each "entered by the Second Circuit" without final decision of the district court, without notice, without an opportunity to be heard. Respondents filed these injunctions several times with affidavits in the District of Columbia to bar petitioner access to federal courts.

In this case respondents filed the three 1983 and 1992 permanent injunctions and moved pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the injunctions are valid and the District Court "must enforce" them, and dismiss the Complaint in its entirety with prejudice, expenses, costs, attorneys fees, sanctions, and bar future suits by petitioner.

In opposition, with statement of genuine issues and affidavit, petitioner stated, inter alia, that each of the three 1983 and 1992 permanent injunctions is, as a matter of law, void for want of subject matter jurisdiction, 28 U.S.C. §1291, and also false, in that the Second Circuit never entered such injunctions. In fact, the Second Circuit with Order filed Feburary 23, 1983, denied the motion for an 1983 injunction, as it results from its General Docket. And as to the two 1992 permanent injunctions the Second Circuit never entered them, creating thus several disputed factual issues.

The District Court with summary judgment order filed April 22, 1999 (App. B) and judgment filed May 11, 1999 (App. C) granted respondents' motions in toto and determined that "Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the

Second Circuit." The Court of Appeals summarily affirmed "substantially for the reasons stated by the district court in its order filed April 22, 1999." (App. A). The same district court in a prior related case, same issues and parties, tried the same disputed factual issues on motion for summary judgment and inter alia, ordered the Clerk of the Court not to accept from petitioner any pleadings, motions, notice of appeal or other document (App. G).

IN RE. THE EX PARTE 1983 PERMANENT INJUNCTION

According to respondents in Alexander Wiesner v. Rogers Hoge, Willkie Farr, et al., No. 82-7381 (2d Cir. March 10, 1983), the Second Circuit entered against petitioner a permanent injunction without final decision of the district court on motion raised for the first time on appeal in which petitioner was not designated as a party and has not been made a party by service of process (App. D).

IN RE. THE PERMANENT INJUNCTION OF JULY 15, 1992

In Wiesner v. Willkie Farr, et al., No. 92-7408 (2d Cir. July 15, 1992) respondents Morgenthau and Jackson moved:

> "This is a motion to dismiss appeal, or, in the alternative for summary affirmance. This motion also seeks modification of a prior injunction against Wiesner issued by this Court in March 1983 and seeks imposition of sanctions." (App.E)

Respondents Morgenthau and Jackson were not parties to the 1983 appeal, therefore had no standing to seek

"modification" of the ex parte 1983 injunction. Their motion for "modification" of the ex parte 1983 injunction was raised for the first time on appeal without final decision of the District Court. According to Morgenthau, Jackson and counsel, Marc Scholl, on their motion for "modification" of the ex parte 1983 injunction the Second Circuit entered a brand new 1992 permanent injunction against petitioner on July 15, 1992, without notice and without an opportunity to be heard. The new 1992 injunction obtained by Morgenthau and Jackson refers to the void and inexistent ex parte 1983 injunction.

Respondents Morgenthau and Jackson filed the 1983 and 1992 injunctions in this case and joined Respondents Willkie Farr, et al., in moving pursuant to Fed. R. Civ. P. 12(b)(6) arguing that the District Court "must enforce" them, but did not prove their authenticity, validity and existence, nor that the claims and issues adjudicated by the Second Circuit in the 1983 appeal were the same as those presented in the instant action. In fact, (1) the Second Circuit did not enter any injunction on July 15, 1992, on the Morgenthau motion for "modification', as it results from the Second Circuit General Docket; and (2) the claims and issues in the 1983 appeal are entirely different and not connected or related in any way to those in the 1992 appeal and in the instant action.

IN RE. THE PERMANENT INJUNCTION OF JULY 30, 1992

In Wiesner v. Willkie Farr, et al., No. 92-7408 (2d Cir. July 30, 1992) respondents Willkie Farr, et al., moved:

> "This is a motion to dismiss the appeal, or in the alternative, for summary affirmance. This motion also seeks the imposition of sanctions." (App. F).

Thus, Willkie Farr did not move for an 1992 injunction. However, on July 22, 1992, the General Docket of the Second Circuit entered:

> "Letter received from Brian O'Connor of Willkie Farr requesting that the Court endorse the same disposition as the July 15th order on the motion to dismiss filed by Marc Scholl, ADA on their motion to dismiss."

According to Willike Farr, et al., upon said O'Connor letter of July 22, 1992, the Second Circuit entered against petitioner a permanent injunction on July 30, 1992, without final decision of the district court, without notice, without an opportunity to be heard. Willkie Farr, et al., filed the 1983 and 1992 permanent injunctions in district court claiming with affidavit that they were valid and existent and moved pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the District Court "must enforce" them, dismiss the Complaint and enter an order of injunction barring future suits by petitioner.

Respondents herein procured the void 1983 and 1992 permanent injunctions, as well as the void 1999 perpetual injunction to cover up other unprecedented overt illegal acts, inter alia, violations of the Fourth and Sixth Amendment of the Constitution. In fact, the causes of action in the Complaint under the Fourth and Sixth Amendment are not even mentioned in the District Court's summary judgment, they all remain concealed under the umbrella of the void injunctions.

REASON FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE SUMMARY AFFIRMANCE OF THE COURT BELOW SANCTIONED THE DISTRICT COURT THAT TRIED DISPUTED FACTUAL ISSUES ON MOTIONS FOR SUMMARY JUDGMENT AND ENTERED A PERPETUAL INJUNCTION "BARRING FUTURE SUITS BY PLAINTIFF" WITHOUT TRIAL.

A. SEVENTH AMENDMENT RIGHT OF TRIAL BY JURY

Petitioner's jury demand was made on the Complaint. Respondents moved pursuant to Fed. R. Civ. P. 12(b) (6), arguing that the three 1983 and 1992 permanent injunctions were valid and the District Court "must enforce" them, dismiss the Complaint with prejudice, expenses, costs, attorneys fees, sanctions, and enter an order of injunction barring future suits by plaintiff.

In opposition, with statement of Genuine Issues and affidavit, petitioner stated, inter alia, that each of the three 1983 and 1992 permanent injunctions was void for want of subject matter jurisdiction, 28 U.S.C. §1291, and also false, in that, neither the Second Circuit, nor any other U.S. Court of Appeals have ever entered permanent injunctions without final decisions of the district court on motions raised for the first time on appeal, without notice, without an opportunity to be heard, creating thus several disputed factual issues.

The District Court with summary judgment order filed April 22, 1999 and with judgment filed May 4, 1999, granted in toto respondents' motions and, inter alia, stated:

"Plaintiff's Complaint and Opposition to the several Motions focus primarily on his challenge to the validity of the Second Circuit's injunctions,..." (App. B)

The District Court thus confirmed that several factual issues in re. "the validity of the Second Circuit's injunctions,..." were challenged and disputed and then proceeded to try these same disputed factual issues on motions for summary judgment and determined that "Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the Second Circuit." Thus, petitioner's constitutional right of trial by jury was violated.

Federal Rules of Civil Procedure 38(a) provides:

> The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a federal statute of the United States shall be preserved to the parties inviolate.

The summary affirmance Order of the Court of Appeals states that the merits of the parties' positions are so clear as to warrant summary action. Indeed, respondents argued that the 1983 and 1992 injunctions were valid and moved that the District Court "must enforce" them, and petitioner stated that the injunctions were void, 28 U.S.C §1291, and also false. Thus, the merits of the parties' positions here are so clear as to warrant trial, as a matter of law.

The District and Circuit Courts erred in trying disputed factual issues on motions for summary judgment and summarily affirming it.

B. INJUNCTION BARRING FUTURE SUITS BY PLAINTIFF ORDERED BY SUMMARY JUDGMENT WITHOUT TRIAL.

The injunction "barring future suits by plaintiff" on its face is perpetual, includes both federal and state courts, and all matters. However, it does not set forth the reasons for its issuance. All the District Court's summary judgment stated is:

(a) "Motion of Defendants Willkie Farr & Gallagher, Stephen W. Greiner, Louis A. Craco, Kenneth J. Bialkin and Jack Altbush to Dismiss the Complaint and for Entry of the Order Barring Future Suits by Plaintiff [#3]"

(b) "ORDERED, that Defendants' Motions to Dismiss [#3] are granted;"

Thus, the only reason for entry of the perpetual injunction set forth by the District Court summary judgment is that Willkie Farr, et al., asked for it. (All defendants joined the Willkie Farr motion).

Federal Rule of Civil Procedure 65(d) provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts to be restrained;.

The District Court's failure to comply with Rule 65(d) means that its perpetual injunction is without basis. See, e.g., Reich v, ABC/York-Estes Corp., 64 F.3d 316, 320 (7th Cir. 1995) (holding that failure to comply with Rule 65 (d) meant no permanent injunction existed).

C. COSTS, EXPENSES AND ATTORNEYS' FEES

With summary judgment the District Court

> "ORDERED, that Mr. Wiesner shall pay costs, expenses, and attorneys' fees to Defendants Skadden, Arps, Slate, Meagher and Flom LLP for initiating this vexatious litigation in direct violation of two prior court orders in the amount of $1,000.00;"

There is no doubt that all respondents know that the 1983 and 1992 injunctions are void pursuant to 28 U.S.C. §1291, and void injunctions can not be violated, and complaining about them is a right, not a "vexatious litigation'. However, despite their knowledge all respondents filed these injunctions with affidavits, in both the District Court and the Court of Appeals D.C. Circuit, as if they were valid and existent.

D. SANCTIONS

With summary judgment the District Court

> "ORDERED, that Mr. Wiesner shall pay sanctions for violating two prior court Orders in the amount of $2,500.00;"

Again, there is no doubt all respondents knew that the prior Court Orders, the 1983 and 1992 permanent injunctions are, as a matter of law, void, pursuant to 28 U.S.C. §1291, and thus cannot be violated.

E. ORDER TO THE CLERK OF THE COURT

With summary judgment the District Court ordered the Clerk of the Court not to accept any new Complaints from petitioner absent proof that he has leave to do so from the United States District Court for the Southern District of New York,...

Fact is, as the District Court itself states, the 1983 and 1992 injunctions were "entered by the Second Circuit" not by the U.S. District Court for the S.D.N.Y.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE SUMMARY AFFIRMANCE OF THE COURT BELOW SANCTIONED THE DISTRICT COURT GIVING EFFECT TO INJUNCTIONS WHICH ARE FACIALLY VOID FOR WANT OF SUBJECT MATTER JURISDICTION.

The District Court ruled:
"The Court, having considered the motions and the case file in its entirety, has thus determined that Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the Second Circuit." (App. B)

"Entered against him by the Second Circuit." Not by the district court that has original jurisdiction. 28 U.S.C. §1291 provides:

The courts of appeals...shall have jurisdiction of appeals from all final decisions of the district courts of the United States,... As a matter of law, pursuant to §1291 the Second Circuit lacked subject matter jurisdiction to enter the three 1983 and 1992 permanent injunctions without final decisions of the District Court, therefor, the three 1983 and 1992 injunctions are void. Moreover, *no judgment was entered on the orders of injunctions of 1983 and 1992.* (App. D, E, F)

Restatement of Judgments §6 provides:

> The lack of any essential element of jurisdiction (power or notice) will render the judgment unenforceable.

The three 1983 and 1992 orders of injunctions lack both power and notice.

THE THREE 1983 AND 1992 PERMANENT INJUNCTIONS ARE INADEQUATE

Federal Rule of civil Procedure 65(d) provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts to be restrained;...

None of the three 1983 and 1992 permanent injunctions describe the act or acts sought to be enjoined, each is based

on reference to "meritless, repetitious and vexatious lawsuits", which is inadequate pursuant to Fed. R. Civ. P. 65 (d). See Peregine Myanmar, Ltd. v. Segal, 89 F. 3d 41 (2d Cir. 1996) (prohibition against "spurious" lawsuits is overbroad, unless district court on remand can define that term more precisely. Here, according to respondents the same Second Circuit made the overbroad references to "vexatious lawsuits" not once, but three times. See e.g., Reich v. ABC/York-Estes Corp., 64 F.3d 316, 320 (7th Cir. 1995) (holding that failure to comply with Rule 65 (d) meant no permanent injunction existed). Here, there are three more reasons the three 1983 and 1992 permanent injunctions are inexistent: none of the three was entered by the Second Circuit.

As to the "meritless, repetitious and vexatious lawsuits" it should be noted that no matter, no claim, no issue was ever litigated in any court at any time between petitioner and respondents. Respondents always obtained summary judgments on disputed factual issues as they did in the instant action.

Implicit in the concept of due process embodied in the Fifth and Fourteenth Amendment of the United States Constitution is the principle that one cannot be bound by a judgment of a court that lacked jurisdiction of the person or subject matter. This means, not only that such a judgment cannot be enforced against the person or her property, but also that the judgment will not have the issue precluding effect that valid judgments normally have.

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE SUMMARY AFFIRMANCE OF THE COURT BELOW SANCTIONED THE DISTRICT COURT JUDGMENT WHICH CONFLICTS WITH THIS COURT'S PRIOR RULINGS AND WITH THOSE OF OTHER COURTS OF APPEALS.

A. DUE PROCESS AND COMITY

The District Court erred when it gave effect to orders which are facially void for want of both jurisdiction of the person and subject matter on ground of "comity". The District Court ruled:

> "consideration of comity, consistency of treatment, and orderly administration of justice" require that the validity of these injunctions be challenged in the courts of the Second Circuit. Martin-Trigona v. United States, 779 F.2d 72, 73 (D.C. Cir.1985). The Court, having considered the motions and the case file in its entirety, has thus determined that Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the Second Circuit." (App. B and C).

The District Court's summary judgment conflicts with this Court's prior ruling in Griffin v. Griffin, 327 U.S. 220 (1946):

> A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction [citing cases].

> Moreover, due process requires that no other jurisdiction shall give effect, not even as a matter of comity, to a judgment elsewhere acquired without due process [citing Restatement of Judgments].

The District Court relies on Martin-Trigona, but there is a relevant difference between the two cases. In Martin-Trigona the injunction was properly entered by the District Court of Connecticut with final decision after trial, whereas here were "entered by the Second Circuit" without final decision of the district court, without trial, without notice, without an opportunity to be heard.

B. JURISDICTION AND NOTICE

The District Court erred in summarily dismissing the Complaint in its entirety with prejudice, attorneys fees, costs, sanctions and barring future suits by petitioner. Erred in determining petitioner violated void 1983 and 1992 injunctions which were knowingly filed by respondents with affidavits as if they were valid and existent. The District Court's summary judgment conflicts with this Court's prior rulings.

Pursuant to 28 U.S.C. §1291, the Second Circuit lacked subject matter jurisdiction to enter the 1983 and 1992 injunctions without final decision of the district court, without notice, without an opportunity to be heard.

Restatement of Judgments §6 provides:

> The lack of any essential element of jurisdiction (power or notice) will render the judgment unenforceable.

This Court stated in Hansberry v. Lee, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed 22 (1940):

(a) A judgment void for want of jurisdiction may be collaterally attacked at any time in any court [see Galpin v. Page, 18 Wall. 350, 366, 367];

(b) If the first court was without jurisdiction...the action of the first court is without basis. The second court cannot give effect to the judgment so rendered;

(c) It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in a litigation in which he is not designated as a party or to which he has not been made a party by service of process...A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute...prescribe...

This Court stated in Thompson v. Whitman, 85 U.S. (18 Wall.) 457, 469 21 L.Ed 897 (1873):

The full faith and credit clause,...does not preclude a second forum's inquiry into questions of the first court's personal or subject matter jurisdiction.

CONFLICTS WITH OTHER COURTS OF APPEALS

Respondents moved pursuant to Fed. R. Civ. P. 12 (b) (6), that the district court "must enforce' the three 1983 and 1992 injunctions "entered by the Second Circuit" without final decision of the district court and dismiss the Complaint in its entirety with prejudice, expenses, costs,

attorneys fees, sanctions and barring future suits by plaintiff. Thus, respondents asserted res judicata/preclusion, but did not establish those facts necessary for res judicata/preclusion, i.e., whether the Second Circuit adjudicated in the 1983 appeal the same claims and issues involved in the instant 1998 action, nor the authenticity, validity and existence of the 1983 and 1992 injunctions. Despite said circumstances the District Court tried disputed factual issues on motion for summary judgment and granted in toto respondents' motions including a perpetual injunction barring future suits by plaintiff, without a trial, without a hearing. The District Court erred and its summary judgment conflicts with applicable decisions of Courts of Appeals, including the D.C. Circuit.

Courts of Appeals have held that the burden falls on the party asserting res judicata/preclusion to establish those facts necessary for res judicata/preclusion. See McNellis v. First Federal Sav. & Loan, 364 F. 2d 251, 257 n.8 (2d Cir. 1966) ("The burden of showing the meaning of the former adjudication is on the party asserting res judicata."); Moore v. United States, 344 F.2d 588 (D.C. Cir 1965) (Court referred to the "burden of showing that the fact in question was determined by the prior judgment"). One Court of Appeals said, "Collateral estoppel applies only to those matters which were determined by the prior verdict. ...The party claiming estoppel...has the burden of proof on this issue." United States v. Friedland, 391 F. 2d 378, 382 (2d Cir. 1968).

In Sum, petitioner respectfully submits to this Court's consideration:

(a) that the lack of the Second Circuit's jurisdiction over the subject matter of entering orders of injunctions without final decision of the district court is clear;

(b) that the determination as to jurisdiction depends upon questions of law, 28 U.S.C. §1291 and Fed. R. Civ. P. 65 (d), rather than of fact;

(c) that the Second Circuit is one of limited and not of general jurisdiction;

(d) that the question of jurisdiction was not actually litigated (See Restatement §10);

(e) that respondents knew at all relevant times that the 1983 and 1992 orders of injunctions of the Second Circuit were void pursuant to 28 U.S.C. §1291, and also inexistent, in that:
(1) the Second Circuit did not enter such orders of injunctions; and
(2) for not complying with Fed. R.Civ. P. 65 (d);
Despite said knowledge respondents insist, with affidavits and briefs, for over sixteen years that the 1983 and 1992 injunctions are valid and the courts "must enforce" them, on their say so, without any proof. And to show that their say so is the law respondents obtained from the District Court that tried disputed factual issues on motion for summary judgment, a perpetual injunction "barring future suits by plaintiff" without trial, without complying with Fed. R. Civ. P. 65 (d).

The District Court summary judgment order (App. B) its specific determinations and content repeated in

its judgment (App. C) and its summary affirmance by the Court of Appeals (App. A) are effective final decisions by the District and Circuit Courts.

CONCLUSION

The District and Circuit Courts erred by trying disputed factual issues on motions for summary judgment and by its summary affirmance and thus determining that petitioner violated 1983 and 1992 orders of permanent injunctions "entered by the Second Circuit" without final decisions of the District Court which, as a matter of law, are facially void and inexistent pursuant to 28, U.S.C. §1291 and Fed. R. Civ. P. 65(d).

The District and Circuit Courts further erred by entering a perpetual injunction Order barring future suits by plaintiff on motions for summary judgment, by its summary affirmance, by failing to comply with Fed. R. Civ. P. 65 (d), by ordering that plaintiff's Complaint is dismissed in its entirety, and that he shall pay costs, expenses, attorneys' fees and sanctions.

This Court should reverse the Per Curiam summary affirmance Order of the United States Court of Appeals for the District of Columbia Circuit of August 4, 1999, and the Order of the United States District Court for the District of Columbia filed April 22, 1999, that tried disputed factual issues on motions for summary judgment, and remand this case for further proceedings, i.e., for trial by jury pursuant to the Seventh Amendment to the Constitution of the United States, and pursuant to the due process and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

_____

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APPENDIX A— ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DATED AND FILED AUGUST 4, 1999

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7079 September Term, 1998
98cv02623

Charles M. Wiesner,

Appellant,

v.

Willkie, Farr & Gallagher, et al.,

Appellees.

BEFORE: Wald, Ginsburg, and Garland, Circuit Judges.

ORDER

Upon consideration of the motions for summary affirmance, the response thereto, and the replies, it is

ORDERED, that motions for summary affirmance, be granted substantially for the reasons stated by the district court in its order filed April 22, 1999. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc., v. Stanley,* 819 F.2d 294, 297 (D.C. Cir 1987) (per curiam), *Walker v. Washington,* 627

F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for hearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX B— ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED APRIL 21, 1999 AND FILED APRIL 22, 1999

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

Charles M. Wiesner,
Plaintiff,

v.

Willkie Farr & Gallagher, Stephen W. Greiner, Louis A. Craco, Jack Altbush, Kenneth J. Bialkin, Skadden, Arps, Slate, Meagher & Flom LLP, Thomas Jackson, and Robert M. Morgenthau,
Defendants.

Civil Action No. 98-2623 (GK)

ORDER

Plaintiff has yet again defied two injunctions entered against him by the United States Court of Appeals for the Second Circuit by filing a lawsuit in federal court. This matter is before the Court on Defendant Skadden, Arps, Slate, Meagher & Flom LLP's Motion to Dismiss with Prejudice and for Sanctions [#2], Motion of Defendants Willkie Farr & Gallagher, Stephen W. Greiner, Louis A. Craco, Kenneth J. Bialkin and Jack Altbush to Dismiss the Complaint and for Entry of the Order Barring Future Suits

by Plaintiff [#3], and Motion of Detective Thomas Jackson and District Attorney Robert M. Morgenthau to Dismiss [#4].

Plaintiff's Complaint and Opposition to the several motions focus primarily on his challenge to the validity of the Second Circuit's injunctions, and his beliefs that the Defendants acted fraudulently in obtaining and attempting to enforce these injunctions. However, "considerations of comity, consistency of treatment, and orderly administration of justice" require that the validity of these injunctions be challenged in the courts of the Second Circuit. *Martin-Trigona v. United States*, 779 F.2d 72, 73 (D.C. Cir. 1985).

The Court, having considered the motions and the case file in its entirety, has thus determined that Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the Second Circuit.

WHEREFORE, it is this 21st day of April, 1999, hereby

ORDERED, that Defendants' Motions to Dismiss [#2, #3, #4] are *granted;* it is further

ORDERED, that Plaintiff's Complaint is *dismissed* in its entirety; it is further

ORDERED, that Mr. Wiesner shall pay costs, expenses, and attorneys' fees to Defendant Skadden, Arps, Slate, Meagher & Flom LLP[1] for initiating this vexatious litigation in direct violation of two prior Court Orders in the amount of $1, 000.00; it is further

ORDERED, that Mr. Wiesner shall pay sanctions for violating two Court Orders in the amount of $2,500.00; it is further

ORDERED, that the Clerk of the United States

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1. No other Defendants requested that costs, expenses, or attorneys' fees be awarded to them.

District Court for the District of Colombia is directed not to accept any new Complaints from Mr. Wiesner absent proof that he has leave to do so from the United States District Court for the Southern District of New York, and that he has paid any costs, expenses, and attorneys' fees awarded to Defendants for improperly commencing the present action.

April 21, 1999
Date

_____
Honorable Gladys Kessler
Unites States District Judge

Copies to:
Charles M. Wiesner
1138 Rockland Avenue
Staten Island, NY 10314

John Patrick Dean
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20036-3384

Janet Lee Goetz
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

David Usher Gourevitch
Office of the District Attorney
New York County
One Hogan Place
New York, NY 10013

APPENDIX C— JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED AND FILED MAY 11, 1999

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

Charles M. Wiesner,
Plaintiff,

v.

Civil Action
No.
98-2623 (GK)

Willkie Farr & Gallagher, Stephen W. Greiner, Louis A. Craco, Jack Altbush, Kenneth J. Bialkin, Skadden, Arps, Slate, Meagher & Flom LLP, Thomas Jackson, and Robert M. Morgenthau,
Defendants.

JUDGMENT

The Court, having considered the motions and the case file in its entirety, has thus determined that Plaintiff's Complaint was filed in violation of the 1983 and 1992 injunctions entered against him by the Second Circuit, it is hereby

ORDERED, that Defendants' Motions to Dismiss are granted, it is further

ORDERED, that Plaintiff's Complaint is dismissed in its entirety in accordance with the Order entered by this Court on April 22, 1999.

May 11, 1999
Dated

_____
Gladys Kessler
United States District Court

APPENDIX D— ORDER OF PERMANENT INJUNCTION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED MARCH 10, 1983

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
No. 82-7381

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse City of New York, on the 10th day of March, one thousand hundred and eighty-three.

Present:

HONORABLE IRVING R. KAUFMAN,
HONORABLE WILLIAM H. TIMBERS,
HONORABLE AMALYA L. KEARSE,
Circuit Judges.

ALEXANDER WIESNER,
Plaintiff,

HELENE WIESNER,
Movant-Appellant,

-against-

ROGERS HOGE & HILLS, WILLKIE FARR & GALLAGHER, QUINT MARX CHILL & GREENE, JAMES N. BLAIR, FREDERICK A. NICOLL, STEPHEN W. GREINER, BENITO ROMANO, C. DANIEL CHILL and SAMUEL ROTH,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was submitted.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

1. The Judgment is affirmed for the reasons stated in this panel's order in *Alexander Wiesner, et ano. v. Samuel Roth, et al.*, No. 82-7451, decided this day (affirming the judgment entered on the district court's order (Edward R. Neaher, *District Judge),* denying movant-appellant Helene Wiesner's motion to be substituted as plaintiff for her deceased husband, Alexander Wiesner).
2. In view of the prosecution, by Charles Wiesner and others acting at his direction, of a series of meritless, repetitious, and vexatious lawsuits, it is ordered that Charles Wiesner and others acting at his direction, including Luigia Wiesner and Helene Wiesner, be and they hereby are permanently enjoined from instituting further actions in any court of the United States against all defendants-appellees in connection with any matter set forth in the complaints and amended complaints herein, or relating to events connected with that litigation.

s/ IRVING R. KAUFMAN,
s/ WILLIAM H. TIMBERS,
s/ AMALYA L. KEARSE,
Circuit Judges.

APPENDIX E— ORDER OF PERMANENT INJUNCTION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JULY 15, 1992

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

Wiesner, v. Willkie Farr

92-7408
NOTICE OF MOTION
for Dismissal of appeal or, summary affirmance, modif. of injunction, sanctions

MOTION BY:

Marc Frazier Scholl
District Attorney's Office
One Hogan Place,
New York, New York 10013
(212) 335-9324

OPPOSING COUNSEL:

Charles M. Wiesner, *Pro Se*
1138 Rockland Avenue
Staten Island, New York 10314

Has consent of opposing counsel:		
A. been sought?	Yes	x No
B.been obtained?	Yes	x No
Has service been effected?	x Yes	No
Is oral argument desired?	Yes	x No
(Substantive motions only)		

Requested return date: June 16, 1992
(*See Second Circuit Rule 27(b)*)
Has argument date of appeal been set:

A. by scheduling order? x Yes No
B. by firm date of argument notice? Yes No
C. If Yes, enter date: week of 8/10/92 of later

Judge or agency whose order is being appealed:
Hon. Robert P. Patterson

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below: Yes No
(*See F.R.A.P. Rule 8*)
Would expedited appeal eliminate need for this motion? Yes No
If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? Yes No

Brief statement of relief requested:

This is a motion to dismiss the appeal, or, in the alternative for summary affirmance. This motion also seeks modification of a prior injunction against Wiesner issued by this Court in March 1983 and seeks imposition of sanctions.

By:
S/ MARC FRAZIER SCHOLL DATE: 5/26/92

Appearing for:
Thomas Jackson and
Robert M. Morgenthau

Appellant or Petitioner:
Plaintiff Defendant
Appellant or Respondent:
Plaintiff x Defendant

Date: 5/26/92

ORDER

IT IS HEREBY ORDERED that the motion to dismiss the appeal is granted. Double costs and reasonable attorney's fees are awarded to defendants-appellees.

Because of the meritless and vexatious litigation undertaken by plaintiff-appellant Charles Wiesner arising out of the subject matter of the instant dispute, this court has previously enjoined plaintiff-appellant from pursuing further actions related thereto. *Wiesner v. Roger Hoge & Hill, et al.*, No. 82-7381 (2d Cir March 10, 1983). As demonstrated by the instant action however, plaintiff-appellant has not been deterred by this injunction.

It is therefore Further Ordered that plaintiff-appellant, and persons acting at his directions are permanently enjoined from commencing any new action arising out of the subject matter of the instant action or any of the previous actions related thereto, in any court of the United States, without first obtaining leave from the United States District Court for the Southern District of New York.

It is Further Ordered that the Clerk of the United States District Court for the Southern District of New York shall not authorize any such action unless and until plaintiff-appellant submits proof that he has paid: (1) the $10, 000 sanction imposed by the district court in the underlying action; (2) the double costs and $1, 000 attorney's fees awarded by this court in an earlier appeal related to the subject matter of this appeal, *Wiesner v. Willkie Farr & Gallagher, et al.*, No. 90-7162 (2d Cir May 18, 1990); and (3) the double costs and reasonable attorney's fees awarded by this Order.

s/ HON. FRANK X. ALTIMARI,

Date July 15, 1992

s/ HON. J. DANIEL MAHONEY,
s/ HON. JOHN M. WALKER, JR.,
Circuit Judges.

APPENDIX F— ORDER OF PERMANENT INJUNCTION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JULY 30, 1992

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Wiesner v. Willkie Farr

92-7408
NOTICE OF MOTION
for Dismissal of the appeal, or alternatively, summary affirmance

MOTION BY:
Brian E. O'Connor
Willkie Farr & Gallagher
One Citicorp Center
153 East 53rd Street
New York, New York 10022 (212-935-8000)

OPPOSING COUNSEL:
Charles M. Wiesner
Plaintiff-Appellant, P*ro Se*
1138 Rockland Avenue
Staten Island, New York 10314

Has consent of opposing counsel:

A. been sought?	Yes	x No
B. been obtained?	Yes	x No
Has service been effected?	x Yes	No
Is Oral argument desired?	Yes	x No

(*Substantive motions only*)

Requested return date: June 9, 1992
(*See Second Circuit Rule 27(b)*)
Has Argument date of appeal been set:

A. by scheduling order: x Yes No
B. by firm date of argument notice? Yes No
C. If Yes, enter date week of 8/10/92

Judge or agency whose order is appealed:
Hon. Robert P. Patterson

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL
Has request for relief been made below: Yes No
(See F.R.A.P. Rule 8)
Would expedited appeal eliminate need for this motion? Yes No
If No, explain why not

Will the parties agree to maintain the status quo until the motion is heard? Yes No

Brief statement of the relief requested:

This is a motion to dismiss the appeal, or in the alternative, for summary affirmance. This motion also seeks the imposition of sanctions.

By:

BRIAN E. O'CONNOR

Appearing for :
Defendants-Appellees Willkie Farr, Craco, Grainer, Bialkin, Altbush

Appellant or Petitioner:
Plaintiff Defendant
Appellant or Respondent:
Plaintiff x Defendant

Date: 5/21/92

ORDER

IT IS HEREBY ORDERED that the motion to dismiss the appeal is granted. Double costs and reasonable attorney's fees are awarded to defendants-appellees.

Because of the meritless and vexatious litigation undertaken by plaintiff-appellant Chales Wiesner arising out of the subject matter of the instant dispute, this Court has previously enjoined plaintiff-appellant from pursuing further actions related thereto. *Wiesner v. Rogers Hoge & Hill, et al.*, No. 82-7381 (2d Cir. March 10, 1983). As demonstrated by the instant action however, plaintiff-appellant has not been deterred by this injunction.

It is therefore Further Ordered that plaintiff-appellant, and persons acting at his direction, are permanently enjoined from commencing any new action arising out of the subject matter of the instant action or any of the previous actions related thereto, in any Court of the United States, without first obtaining leave from the District Court for the Southern District of New York.

It is Further Ordered that the Clerk of the United States District Court for the Southern District of New York shall not authorize any such action unless and until plaintiff-appellant submits proof that he has paid: (1) the $10,000 sanction imposed by the district court in the underlying action; (2) the double costs and $1,000 attorney's fees awarded by this Court in an earlier appeal related to the subject matter of this appeal, *Wiesner v. Willkie Farr & Gallagher, et al.*, No. 90-7162 (2d Cir. May 18, 1990); and (3) the double costs and reasonable attorney's fees awarded by this Order.

Date: July 30, 1992

s/ HON. FRANK X. ALTIMARI,
s/ HON. J. DANIEL MAHONEY
s/ HON. JOHN M. WALKER, JR.,
Circuit Judges.

APPENDIX G— ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED AND FILED SEPTEMBER 2, 1994

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Charles M. Wiesner,
Plaintiff,

v.

Civil Action
No.
94-1112 (GK)

Willkie Farr & Gallagher, et al.,
Defendants.

ORDER DISMISSING COMPLAINT AND IMPOSING SANCTIONS

The Court presently has before it Defendants' Motions to Dismiss the Complaint with Prejudice and For Sanctions. The Court has considered the Motions, as well as the case file in its entirety, and has determined that Defendants' Motion to Dismiss the Complaint and For Sanctions must be granted, and the entire action dismissed. As Defendants' Motions to Dismiss clearly demonstrate, not only does Plaintiff's complaint have no merit whatsoever, but also it was filed in blatant disregard of two injunctions entered against him by the United States Court of Appeals for the Second Circuit.

WHEREFORE, it is, this 2nd day of September, 1994, hereby

ORDERED, that Defendants' Motions to Dismiss Plaintiff's Complaint are hereby *GRANTED*; and it is further

ORDERED, that Plaintiff's Complaint is hereby *DISMISSED* in its entirety; and it is further

ORDERED, that Mr. Wiesner shall pay costs, expenses, and attorneys' fees to Defendants for initiating "meritless and vexatious litigation" in direct violation of two prior Court Orders in the amount of $1500.00; and it is further

ORDERED, that Mr. Wiesner shall pay sanctions for violating two Court Orders in the amount of $2500.00; and it is further

ORDERED, that the Clerk of the United States District Court for the District of Columbia is directed not to accept any pleading, motion, notice of appeal or other document from Mr. Wiesner absent proof that he has leave to do so from the United States District Court for the Southern District of New York and that he has paid any costs, expenses, and attorneys' fees awarded to Defendants for improperly commencing the present action.

So ordered.

September, 2, 1994
Date

Gladys Kessler
U.S. District Judge

APPENDIX H— ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DATED AND FILED SEPTEMBER 22, 1999

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7079 September Term, 1999
98cv02623

Charles M. Wiesner,
Appellant,

v.

Willkie Farr & Gallagher, et al.,
Appellees.

BEFORE: Edwards, Chief Judge; Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Robert A. Bonner
Deputy Clerk

Circuit Judge Wald did not participate in this matter.